Supreme Court, U.S.
FILED
MAY 28 1993
OFFICE OF THE CLERK

No. 109, Original

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

STATES OF OKLAHOMA AND TEXAS,
Plaintiffs,

v.

STATE OF NEW MEXICO,
Defendant.

Jerome C. Muys, *Special Master*

REPORT ON REMANDED UTE RESERVOIR SEDIMENT CONTROL ISSUE AND RECOMMENDATION FOR ENTRY OF THE PARTIES' STIPULATED JUDGMENT AND DECREE

May 28, 1993

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

TABLE OF CONTENTS

	Page
I. STATEMENT OF THE REMANDED ISSUE ..	1
II. THE PROCEEDINGS AND RECORD ON REMAND	3
III. THE PARTIES' PROPOSED SETTLEMENT OF THE DISPUTE	5
IV. RECOMMENDATION TO ENTER THE PARTIES' STIPULATED JUDGMENT AND DECREE	7
A. Judgment	7
B. Decree	8
APPENDIX	
Joint Motion For Entry Of Stipulated Judgment And Decree	A-1

TABLE OF AUTHORITIES

CASES	Page
Alabama Power Co. v. Costle, 636 F.2d 323 (D.C. Cir. 1980)	11
Bean v. United States, 163 F.Supp. 838 (Ct. Cl.), *cert. denied*, 358 U.S. 906 (1958)	9
Chevron, U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984)	13
Ford Motor Credit Co. v. Milhollin, 444 U.S. 555 (1980)	13
Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92 (1938)	9
Ide v. United States, 263 U.S. 497 (1924)	8
Nebraska v. Wyoming, 325 U.S. 589 (1945)	8
Oklahoma and Texas v. New Mexico, 501 U.S. ___, 111 S.Ct. 2281 (1991)	1,8,14
Public Citizen v. United States Dept. of Justice, 491 U.S. 440 (1989)	10
Texas v. New Mexico, 482 U.S. 124 (1987)	12
Virginia v. Tennessee, 148 U.S. 503 (1893)	13
MISCELLANEOUS	
Frankfurter and Landis, *The Compact Clause - A Study in Interstate Adjustments*, 34 Yale L.J. 685 (1925)	13
Special Master's Report of October 15, 1990	2,3,4
Stegner, W., *The Sound of Mountain Water* (Univ. of Nebraska Press, 1979)	15

I. STATEMENT OF THE REMANDED ISSUE

The issue remanded to the Special Master by the Court in its decision of June 17, 1991, *Oklahoma and Texas v. New Mexico*, 501 U.S. ___, 111 S. Ct. 2281, 2293, involves the legal status under the Canadian River Compact ("Compact," 66 Stat. 74) of an estimated 25,000 acre-feet of water stored in Ute Reservoir on the Canadian River in New Mexico between elevation 3725, the location of the Ute Dam outlet works,[1] and elevation 3741.6.

Compact Article II(d) defines "conservation storage" in terms of water stored "for subsequent release" for specified beneficial uses and excludes water stored for certain other purposes, including "sediment control":[2]

> The term "conservation storage" means that portion of the capacity of reservoirs available for the storage of water for subsequent release for domestic, municipal, irrigation and industrial uses, or any of them, and it excludes any portion of the capacity of reservoirs allocated solely to flood control, power production and sediment control, or any of them.

---

[1] "An outlet works regulates or releases water impounded by a dam. It can release incoming flows at a retarded rate, as does a detention dam; it can divert incoming flows into canals or pipelines, as does a diversion dam; or it can release stored waters at rates dictated by downstream needs, by evacuation considerations, or by a combination of multiple-purpose requirements." N.M. Ex. 101 at 435.

[2] 66 Stat. at 75. Although the definition is framed in terms of reservoir "capacity," the Court's 1991 decision interpreted it as referring to "stored water." 111 S. Ct. at 2286-89.

No trial was conducted in the earlier proceedings. Rather the legal issues were decided on the parties' Agreed Statement of Material Facts based on supporting documents and deposition testimony. The state of the record and the parties' contentions on the sediment control issue in the earlier proceedings are set out at pages 89-101 of the Special Master's Report of October 15, 1990.

In the earlier proceedings New Mexico contended that the water between the outlet works and elevation 3741.6 is part of a "sediment control pool" and thus exempt by virtue of Article II(d) from chargeability against Article IV(b)'s 200,000 acre-foot limitation on conservation storage by New Mexico in the Canadian River basin below Conchas Dam.

Texas and Oklahoma conceded that any water stored in the "dead storage" portion of the sediment control pool below the outlet works is exempt from chargeability as conservation storage, recognizing that the primary purpose served is sediment deposition and that, in any event, such volumes are not physically available for subsequent release as required by Article II(d). However, they disagreed that the additional storage in the "desilting pool" between elevations 3725 and 3741.6 is exempt, arguing that the Compact exclusion applies only to water stored "primarily" for sediment control and that the desilting pool serves no present or reasonably forseeable recognized sediment control function. They alleged that the dominant. if not sole function of the pool is the maintenance of a minimum pool for recreation and fish and wildlife purposes. New Mexico countered that the current recreation use of the desilting pool is only "incidental" to its primary sediment control

purpose and should not vitiate its otherwise exempt status.[3]

II. THE PROCEEDINGS AND RECORD ON REMAND

The parties met with the Special Master in Denver, Colorado on August 27, 1991, to establish procedures for resolving the remanded "sediment control pool" issue. New Mexico requested that the record in the earlier proceedings be reopened to permit it to present additional testimony and documentary evidence on the issue. Texas and Oklahoma opposed this request, pointing to the Special Master's statement in his initial report that "the sparse record developed by the parties probably provides an adequate basis for a decision" on the issue. 1990 Rep. at 99-100. The Special Master nevertheless directed New Mexico to file a motion detailing the additional evidence it wished to present and identifying its relevance and materiality to the remanded issue. After New Mexico had done so and Texas and Oklahoma had filed their objections, the Special Master issued an order granting New Mexico's motion and directing the parties to submit an opening round of prepared testimony with accompanying exhibits and responses to the other par-

---

[3] New Mexico also argued in the earlier proceedings that even if the recreation use of the pool is viewed as its dominant purpose, maintenance of a minimum pool for recreation and fish and wildlife purposes is not a "conservation storage" purpose under the Compact Article II(d) definition, nor is such water stored "for subsequent release" as specified in that article, inasmuch as the New Mexico Interstate Stream Commission ("NMISC") obligated itself under its 1962 contract with its sister agency from releasing any of the water in the minimum pool. The Special Master's Report of October 15, 1990 (Chapter IX) rejected this argument and New Mexico did not file exceptions to that recommendation.

ties' initial submittals. New Mexico filed the testimony of two witnesses with supporting exhibits.[4] Texas and Oklahoma filed answering testimony of six witnesses with accompanying exhibits.[5]

---

[4] New Mexico's principal witness was Ernest L. Pemberton, a sedimentation engineering consultant and former Bureau of Reclamation employee with 22 years experience as a specialist in the Sedimentation Section of the Bureau's Denver office, which he headed from 1970 until his retirement in 1982. Mr. Pemberton presented a study of the sediment inflow and its distribution in Ute Reservoir, with particular attention to the projected deposits of sediment in the vicinity of the proposed Eastern New Mexico Water Supply Project's pumping plant in the year 2033.

New Mexico's other witness was Philip B. Mutz, currently an engineering consultant to the NMISC and New Mexico's commissioner on the Canadian River Commission. Drawing on his 33 years of experience with the NMISC, he testified with respect to the objectives of New Mexico in constructing and operating Ute Dam and Reservoir, specifically the allocation of sediment control capacity in the reservoir.

[5] Texas' principal witness was Dr. Daryl B. Simons, a consulting engineer with extensive academic, government and private experience. Dr. Simons did not present his own study of projected sedimentation at Ute Reservoir, but disagreed with Mr. Pemberton's study methodology and conclusions in several respects.

Other Texas witnesses were Brent E. Spronk and Dale E. Book, water resources engineers, who testified generally about the engineering aspects of New Mexico's arguments and the extent of evaporation of water associated with the Ute Reservoir desilting pool, and John C. Williams, General Manager for the Canadian River Municipal Water Authority, which operates the Sanford Project in Texas, who described operations at Lake Meredith with particular emphasis on sedimentation matters and the function of the inactive pool maintained above dead storage

Two days of trial were held in Denver on January 28-29, 1992, at which the prepared testimony was copied into the record, the witnesses subjected to cross-examination, and the parties' exhibits admitted into evidence. Several post-trial affidavits were also submitted, followed by three rounds of briefing. A Draft Report was submitted to the parties for comment on June 18, 1992 and a full day of oral argument on the Draft Report was conducted in Denver on August 20, 1992. The resulting record consists of 820 pages of transcript of the pre-trial conference, trial and oral argument, 83 exhibits, and 276 pages of briefs, proposed findings of fact and conclusions of law and comments on the Draft Report.

III. THE PARTIES' PROPOSED SETTLEMENT OF THE DISPUTE

At the close of oral argument on the Draft Report the parties were urged to consider seriously the possibility of settling their dispute. They were subsequently sent a copy of a revised proposed decree and commentary for further comment. They responded by filing a joint motion requesting a stay of the proceedings so that New Mexico might undertake a sediment survey of Ute Reservoir and the parties might

---

at that reservoir.

Oklahoma witnesses were Patrick J. Yonikas, Acting Engineer Manager in the Water and Wastewater Department of the City of Oklahoma City, Oklahoma, who addressed the effect of sediments on pumping facilities and water treatment requirements, and Harold L. Springer, Chief of the Engineering Division of the Oklahoma Water Resources Board, who testified with regard to the downstream impacts of withholding water for sediment control purposes at Ute Reservoir as opposed to power production and flood control.

seek to reach agreement on a stipulated judgment and decree. Their motion was granted with certain modifications by order of October 26, 1992. The parties were required to submit a report on the status of their settlement efforts by March 1, 1993, so that prospects for settlement could be assessed. That date was subsequently extended to March 15, 1993.

The parties' report of March 15, 1993, stated that (1) agreement had been reached to have the Bureau of Reclamation conduct the Ute Reservoir sediment survey and that it had been performed during November 1992, with assistance from the New Mexico Interstate Stream Commission and the Oklahoma Water Resources Board, (2) the Bureau's draft report dated February 18, 1993 had been reviewed by the parties and comments submitted to the Bureau in early March 1993, and (3) the parties were actively engaged in seeking to reach agreement on a stipulated judgment and decree.

By letter of March 24, 1993, the Special Master urged the parties to expedite their settlement negotiations and to submit a further progress report on April 19, 1993, so that, if settlement prospects were not encouraging, there would be time for the Special Master to file his report with the Court and for the Court to set a briefing schedule for exceptions before the current term ended.

The parties reported on April 19, 1993, that significant progress had been made toward settlement of the case and provided details as to the extent of their negotiations. A conference was convened by the Special Master in Santa Fe, New Mexico, on April 26, 1993, at which time the parties presented the Special Master with a draft stipulated judgment that

was near final agreement and reported that they were working on proposed changes to the Special Master's proposed decree.

Further negotiations produced a final stipulated judgment and decree which were approved by the Special Master. Following final approval by the respective attorneys general, the parties' joint motion for entry of their stipulated judgment and decree was filed with the Court and is also set forth in the appendix to this Report.

IV. RECOMMENDATION TO ENTER THE PARTIES' STIPULATED JUDGMENT AND DECREE

A. Judgment

The stipulated judgment finds that New Mexico has been in violation of Article IV(b) of the Canadian River Compact since an undefined time in 1987 and establishes a schedule of water releases from Ute Reservoir and of reservoir storage levels to be maintained by New Mexico over the period 1993-2002 to come into compliance with the Compact and to compensate Texas and Oklahoma for the period of New Mexico's violation. It also provides for payment by New Mexico of $200,000 to Texas and $200,000 to Oklahoma for their attorneys fees, without conceding any legal obligation to do so.

New Mexico's present claim for exempt status for water stored between elevations 3725 and 3741.6 at Ute Reservoir should be denied, without prejudice to New Mexico's right to seek an appropriate exemption from the Canadian River Commission ("Commission") and, if necessary, from this Court at such time as (1) the Eastern New Mexico Water Supply Project or other project is authorized and funded and (2) New

Mexico demonstrates that inactive storage of some quantity of water above elevation 3725 is a necessary and reasonable use of such water to protect a project's pumping or other operational facilities from significant adverse impacts of sediment flow.

The Special Master *finds* that the proposed judgment is fair, practical and can be easily implemented and *recommends* that it be entered.

B. Decree

The approved decree largely reflects the Special Master's proposed decree that was ready for submittal to the Court in the Fall of 1992 when the parties requested a stay of proceedings to pursue settlement negotiations. It has been modified to reflect the fact that the Ute Reservoir sediment survey, which would have been mandated by the Special Master's decree, has already been accomplished and will be used for determinations of Compact compliance by New Mexico. The decree has also been modified to coordinate its provisions with the stipulated judgment.

The Special Master's comments on the provisions of the decree are set forth below:

Paragraph 1

Paragraph 1 implements the Court's interpretation of Compact Article IV(a), clarified to include diversions at Conchas Dam for use on Bell Ranch as well as the Tucumcari Project and the storage of irrigation return flows or operational waste on those projects before they reach the mainstream or tributaries of the Canadian River. *See* 111 S. Ct. at 2293 note 12. *See also Ide v. United States*, 263 U.S. 497, 505-06 (1924); *Nebraska v. Wyoming*, 325 U.S. 589, 615 note

11 (1945) and *Bean v. United States*, 163 F.Supp. 838, 845 (Ct. Cl.), *cert. denied*, 358 U.S. 906 (1958). It also preserves New Mexico's authority to permit the transfer of water rights from above Conchas Dam to locations below Conchas Dam, subject to the storage limitations of Compact Article IV(b). *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938).

Paragraph 2

Paragraph 2 implements the Court's interpretation of Compact Article IV(b), but exempts the on-project storage by the Tucumcari Project and Bell Ranch provided for in Paragraph 1.

Paragraph 3

Paragraph 3 clarifies the Compact Article II(d) exemption of water stored "solely" for flood control, power generation, and sediment control from chargeability as conservation storage. In a multipurpose project no area of the reservoir, as a practical matter, is used exclusively for any particular purpose. Dead storage comes close to serving only a single function, *i.e.*, sediment control, but even dead storage water also helps provide "head" for power generation and provides fish habitat where, as at Ute, recreational fishing is an important use of the reservoir. The Compact's use of "solely" to limit exemptions for flood control, power generation and sediment control, if applied literally, could impose an unattainable condition with respect to such exempt classifications in a multiple purpose reservoir. Consequently, since a literal application of the

exemption language would produce a seemingly absurd result that appears to be inconsistent with the basic intent of the Compact and would present a serious definitional problem, the Special Master has concluded that "solely" was intended to mean "primarily." *See Public Citizen v. United States Dept. of Justice,* 491 U.S. 440 (1989).

In addition, the Commission is authorized to make allocations between conservation storage and exempt storage in situations where the two classes of storage may be commingled.

Paragraph 4

Paragraph 4 makes it clear that water in "dead storage" is not conservation storage unless it is primarily used for a non-exempt purpose or there is a record of water having been discharged from the area below a dam's outlet works by pumping. This paragraph requires prior Commission approval to change the outlet works to a higher elevation, *e.g.*, because of sediment encroachment, in order to exempt the water stored below the elevated outlet works from chargeability as conservation storage. In the unlikely event that a dam is constructed without outlet works and stores water for conservation storage purposes, *e.g.*, recreation, such storage is classified as conservation storage even though it is not physically "available . . . for subsequent release". Neither the Compact nor its negotiation history shed any light on that description. The definition of conservation storage was probably premised on the assumption that water would be stored behind a conventional dam with outlet works designed to be the sole discharge facilities

and that the storage below the outlet works would primarily be used to capture sediment. Consequently, in situations where a dam either has no outlet works or the water below the outlet works is used primarily for a non-exempt purpose, the descriptive language is inapplicable and provides no basis for converting water stored for what would otherwise be conservation storage into exempt storage.

Paragraph 5

Paragraph 5 is a general prohibition against unilateral designation or redesignation of conservation storage volumes to an exempt status.

Paragraph 6

Paragraph 6 denies New Mexico's claim for exempt status for water stored above elevation 3725 at Ute Reservoir at this time, without prejudice to New Mexico later reasserting its claim before the Commission and the Court if it can demonstrate changed circumstances justifying the claimed exemption.

Paragraph 7

Paragraph 7 exempts from conservation storage chargeability water in small reservoirs of 100 acre-feet capacity or less for which the Commission has waived conservation storage reporting requirements, apparently because of their *de minimis* impact downstream and the disproportionate reporting requirement burden. As a federal interstate administrative agency, the Commission presumably has the power to take such action. *See Alabama Power Co. v. Costle,* 636 F.2d 323, 360-61 (D.C. Cir. 1980).

Paragraph 8

Paragraph 8 directs New Mexico to make appropriate releases at the maximum rate consistent with the safe operation of its storage facilities, after compliance with the schedule set forth in the stipulated judgment, to keep its total conservation storage within the Article IV(b) limitation. New Mexico is required to notify Texas prior to a release and Texas may allow New Mexico to retain water in excess of the Article IV(b) limitation subject to the call of Texas and Article V of the Compact.

Paragraph 9

Paragraph 9 requires New Mexico to conduct sediment surveys at Ute Reservoir every ten years unless circumstances dictate the lack of need for such surveys and the Commission waives that requirement. In the periods between sediment surveys, estimates of annual increments of sedimentation based on the most recent sediment survey will be used to determine the amount of conservation storage in the reservoir.

Paragraph 10

Paragraph 10 permits the Commission to waive any of New Mexico's obligations under the decree. This authority is premised on the fact that because an interstate compact is also a contract, as the Court has emphasized, *Texas v. New Mexico*, 482 U.S. 124, 128 (1987), there would appear to be no reason why obligations under the Compact, as implemented by the decree, could not be waived in accordance with general contract law. A principal difference, of course, is the Constitutional requirement for Congressional

approval of compacts affecting national interests. *Virginia v. Tennessee*, 148 U.S. 503, 517-21 (1893); Frankfurter and Landis, *The Compact Clause - A Study in Interstate Adjustments*, 34 Yale L.J. 685, 694-95 (1925). Consequently, where Congressional consent legislation contains special conditions to protect federal interests, the compact parties should not be permitted to waive such obligations. The Canadian River Compact consent legislation contains no such conditions. The Special Master has also determined that there are no federal interests requiring special protection in the decree. In this regard it is considered significant that the United States chose not to intervene in these proceedings. 1990 Rep. at 2. Nevertheless, Paragraph 10 would require the states to file with the Court a notice of any action they propose to take which would waive or modify any of New Mexico's decree obligations. This will permit the Court to take such action as it may deem appropriate if it disapproves of the proposed action.

Paragraph 10 also recognizes the Commission's authority to take any action "necessary and proper" to carry out Compact purposes so long as it is not in violation of or inconsistent with any provisions of the Compact. Since the Commission is a Congressionally approved interstate administrative agency, it seems appropriate to make it clear that it may exercise the same kinds of ancillary powers as a federal administrative agency. *Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984); *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555 (1980). This clarification should give the Commission (and perhaps other compact commissions) an incentive to deal more creatively with important problems that might otherwise not be addressed at

all because of uncertainty about its authority or presented to the Court.

Paragraph 11

Paragraph 11 makes it clear that the decree does not purport to affect Compact rights or obligations except by providing, to the extent addressed by the decree, how such rights or obligations may be excised or enforced.

Paragraph 12

Paragraph 12 retains continuing jurisdiction in the Court over this suit for appropriate future relief. It also includes a requirement that the parties attempt to resolve any future disputes through good faith negotiations before they seek to invoke the Court's retained jurisdiction. The Court's 1991 decision rejected a similar proposal by the Special Master with respect to the initial exercise of its original jurisdiction in future interstate water compact disputes. 1990 Rep. at 26-34; 111 S. Ct. at 2286 note 3 and 2293 note 11. Texas and Oklahoma had objected to that original proposal. However, once the Court has resolved a dispute, as here, it seems particularly appropriate to impose such a requirement on subsequent invocation by the parties of the Court's retained jurisdiction. Such a requirement should encourage continued cooperative efforts at problem solving consistent with the Compact's purposes and discourage premature piecemeal litigation before the Court. In that spirit, all three states do not oppose this requirement.

The Special Master *finds* that the proposed decree will provide the states a workable framework for carrying out their Compact responsibilities in an effective, cooperative manner consistent with the spirit and letter of the Compact and the Court's earlier decision in these proceedings and *recommends* that it be entered.

Respectfully submitted,

JEROME C. MUYS
Special Master

Epilogue

> "When [the West] fully learns that cooperation, not rugged individualism, is the pattern that most characterizes and preserves it, then it will have achieved itself and outlived its origins. Then it has a chance to create a society to match its scenery."
>
> Wallace Stegner, *The Sound of Mountain Water*

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

No. 109, ORIGINAL

STATE OF OKLAHOMA and
STATE OF TEXAS,

Plaintiffs,

v.

STATE OF NEW MEXICO,

Defendant.

JOINT MOTION FOR ENTRY OF STIPULATED JUDGMENT AND DECREE

Oklahoma, Texas, and New Mexico have signed a Stipulation on Entry of Final Judgment, Attachment A, and have approved the form and content of a Decree, Attachment B. If the Supreme Court enters the Judgment and Decree, the claims of Oklahoma and Texas based on New Mexico's violation of the Canadian River Compact from 1987 to date will be fully compromised and settled by the states. The Special Master recommends in his report to the Supreme Court that the Stipulated Judgment and Decree be entered by the Court. The states, therefore, respectfully request the Supreme Court to enter the proposed Stipulated Judgment and Decree in this case.

SUSAN B. LOVING
Attorney General of Oklahoma

By: /s/ Dean A. Couch
DEAN A. COUCH
General Counsel
Oklahoma Water Resources Board
P.O. Box 150
Oklahoma City, OK 73101-0150

Counsel of Record for Oklahoma

DAN MORALES
Attorney General of Texas

By: /s/ Paul Elliott
PAUL ELLIOTT
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

Counsel of Record for Texas

TOM UDALL
Attorney General of New Mexico

By: /s/ Peter Thomas White
PETER THOMAS WHITE
Special Assistant Attorney General
N.M. Interstate Stream Commission
P.O. Box 25102
Santa Fe, NM 87504-5102

Counsel of Record for New Mexico

I recommend that this motion
be granted:

/s/ Jerome C. Muys
JEROME C. MUYS
Special Master

ATTACHMENT A

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

No. 109, ORIGINAL

STATE OF OKLAHOMA and
STATE OF TEXAS,

Plaintiffs,

v.

STATE OF NEW MEXICO,

Defendant.

STIPULATION ON ENTRY OF FINAL JUDGMENT

Plaintiffs Oklahon.a and Texas and defendant New Mexico stipulate to the entry of the following judgment.

STIPULATED JUDGMENT

Based upon the joint motion of counsel for the parties in this case and the recommendation of the Special Master, it is ordered that the joint motion be, and it is hereby, granted and the Court enters judgment as follows:

1. New Mexico has been in violation of Article IV(b) of the Canadian River Compact from 1987 to date.

2. Pursuant to Paragraph 8 of the Decree entered in this case, New Mexico shall release from Ute Reservoir in 1993 sufficient water to result in an aggre-

gate of not more than 200,000 acre-feet of conservation storage below Conchas Dam in New Mexico, including conservation storage in the other reservoirs subject to the limitation under Article IV(b) of the Canadian River Compact. The release of water from Ute Reservoir will be coordinated with Oklahoma and Texas and will be at the call of Texas.

3. Also in 1993, New Mexico shall release from Ute Reservoir an additional 25,000 acre-feet of storage below the Article IV(b) limitation. New Mexico shall operate Ute Reservoir through the year 2002 at or below the elevations set forth in the schedule below and in accordance with the provisions of Paragraph 8 of the Decree entered in this case. The schedule includes annual adjustments for sediment accumulation in Ute Reservoir and assumes the other reservoirs subject to the Article IV(b) limitation maintain storage at their total capacity of 6,760 acre-feet. The schedule shall be adjusted by the parties to reflect additional amounts of water in conservation storage in any reservoir enlarged or constructed after 1992. Releases of water from Ute Reservoir will be coordinated with Oklahoma and Texas and will be at the call of Texas.

Ute Reservoir Operating Schedule

Year		Authorized Elevation	Reduced Storage Amount	Corresponding Reduced Elevation
After release in	1993	3781.58	25,000	3777.86
	1994	3781.66	25,000	3777.95
	1995	3781.74	25,000	3778.04
	1996	3781.83	25,000	3778.14
	1997	3781.91	25,000	3778.23
	1998	3781.99	20,000	3779.08
	1999	3782.08	15,000	3779.91
	2000	3782.16	6,250	3781.28
	2001	3782.24	3,125	3781.80
Refilled in	2002	3782.32	-0-	3782.32

4. Within seventy-five (75) days after entry of judgment, but in no event earlier than September 1, 1993, New Mexico shall pay as attorneys' fees $200,000 to Texas and $200,000 to Oklahoma. The parties agree that such payments do not constitute and shall not be considered as an admission, express or implicit, that New Mexico has any liability to Texas or Oklahoma for attorneys' fees.

5. Oklahoma and Texas shall release New Mexico from all claims for equitable or legal relief, other than the relief embodied in the Decree of the parties, arising out of New Mexico's violation of the Canadian River Compact during the years 1987 through the date this Stipulated Judgment is entered.

6. In the event of a conflict between this Judgment and the Decree entered in this case, the provisions of the Judgment shall control.

7. The costs of this case shall be equally divided among the parties.

/s/ Dean A. Couch
DEAN A. COUCH
General Counsel
Oklahoma Water Resources Board
P. O. Box 150
Oklahoma City, OK 73101-0150

Counsel of Record for Oklahoma

/s/ Paul Elliott
PAUL ELLIOTT
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
P. O. Box 12548
Austin, TX 78711-2548

Counsel of Record for Texas

/s/ Peter Thomas White
PETER THOMAS WHITE
Special Assistant Attorney General
N.M. Interstate Stream Commission
P. O. Box 25102
Santa Fe, NM 87504-5102

Counsel of Record for New Mexico

Recommended for Entry:

/s/ Jerome C. Muys
Jerome C. Muys
Special Master

ATTACHMENT B

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

No. 109, ORIGINAL

STATE OF OKLAHOMA and
STATE OF TEXAS,

Plaintiffs,

v.

STATE OF NEW MEXICO,

Defendant.

DECREE

1. Under Article IV(a) of the Canadian River Compact ("Compact"), New Mexico is permitted free and unrestricted use of the waters of the Canadian River and its tributaries in New Mexico above Conchas Dam, such use to be made above or at Conchas Dam, including diversions for use on the Tucumcari Project and the Bell Ranch and the on-project storage of return flow or operational waste from those two projects so long as the recaptured water does not include the mainstream or tributary flows of the Canadian River; provided that transfers of water rights from above Conchas Dam to locations below Conchas Dam shall be subject to the conservation storage limitation of Compact Article IV(b). Nothing in this paragraph shall be deemed to determine whether or not the place of use of water rights may be transferred to locations outside the Canadian River basin in New Mexico.

2. Under Compact Article IV(b), New Mexico is limited to storage of no more than 200,000 acre-feet of the waters of the Canadian River and its tributaries, regardless of point of origin, at any time in reservoirs in the Canadian River basin in New Mexico below Conchas Dam for any beneficial use, exclusive of water stored for the exempt purposes specified in Compact Article II(d) and on-project storage of irrigation return flows or operational waste on the Tucumcari Project and Bell Ranch as provided for in Paragraph 1 of this Decree.

3. Quantities of water stored primarily for flood protection, power generation or sediment control are not chargeable as conservation storage under the Compact even though incidental use is made of such waters for recreation, fish and wildlife or other beneficial uses not expressly mentioned in the Compact. In situations where storage may be for multiple purposes, including both conservation storage and exempt storage, nothing in this Decree shall preclude the Canadian River Commission ("Commission") from exempting an appropriate portion of such storage from chargeability as conservation storage.

4. Water stored at elevations below a dam's lowest permanent outlet works is not chargeable as conservation storage under the Compact unless the primary use of that storage is for a non-exempt purpose, or unless other means, such as pumps, are utilized to discharge such storage volumes from the reservoir. No change in the location of a dam's lowest permanent outlet works to a higher elevation shall provide the basis for a claim of exempt status for all water stored below the relocated outlet works without prior approval of the Commission, which shall not be unreasonably withheld. Water stored for non-exempt purposes behind a dam with capacity in excess of 100 acre-feet and with no outlet works is chargeable as conservation storage.

5. Future designation or redesignation of storage volumes for flood control, power production or sediment control purposes must receive prior Commission approval to be exempt from chargeability as conservation storage, which approval shall not be unreasonably withheld.

6. All water stored in Ute Reservoir above elevation 3725 feet is conservation storage; provided that at such time as the authorization and funding of the Eastern New Mexico Water Supply Project or other project results in changed circumstances at Ute Reservoir, New Mexico may seek exemption of a reasonable portion of such water from the Commission under Paragraph 5 of this Decree and, if an exemption is denied, may petition the Court for appropriate relief under Paragraph 12 of this Decree.

7. In 1988 there were 63 small reservoirs in New Mexico with capacities of 100 acre-feet or less with a total capacity of about 1,000 acre-feet, which the Commission has treated as de minimis by waiving storage volume reporting obligations. Water stored in these reservoirs or in similarly sized reservoirs in the future is not chargeable as conservation storage, unless otherwise determined by the Commission.

8. Based on the elevation-capacity relationship of Ute Reservoir effective January 1, 1993, and adjustments pursuant to Paragraph 9 of this Decree, New Mexico shall make and maintain appropriate releases of water from Ute Reservoir or other conservation

storage facilities in excess of 100 acre-feet of capacity at the maximum rate consistent with safe operation of such reservoirs so that total conservation storage in the Canadian River basin below Conchas Dam in New Mexico is limited to no more than 200,000 acre-feet at any time; provided that operation of Ute Reservoir for the period 1993-2002 shall be pursuant to the schedule contained in the Judgment entered in this case; and provided that no violation of this paragraph will occur during any period in which the outlet works of Ute Reservoir are discharging water at the maximum safe discharge capacity (currently 350 cubic feet per second) following the first knowledge that the 1993-2002 schedule or the Article IV(b) limitation after 2002 probably would be exceeded; and provided further that Texas shall be notified by New Mexico prior to a release and may allow New Mexico to retain water in conservation storage in excess of the 1993-2002 schedule or the Article IV(b) limitation after 2002, subject to the call of Texas and subject to the provisions of Article V of the Compact. The outlet works of Ute Reservoir shall be maintained in good working order and shall not be modified to reduce the safe discharge capacity without prior approval of the Commission, which shall not be unreasonably withheld.

9. Sediment surveys of Ute Reservoir shall be conducted at least every ten years by New Mexico, unless such requirement is waived by the Commission. Conservation storage in Ute Reservoir shall be determined from the most recent sediment survey and an annual estimate of the total additional sediment deposition in the reservoir using an annual average of

sediment accumulation during the period between 1963 and the most recently completed survey.

10. Any of the obligations imposed on New Mexico by this Decree may be waived or modified by the Commission; provided that the parties hereto shall file notice of any such action with the Court. The Commission is also authorized to take any necessary and proper actions, not in violation of any provisions of the Compact, to implement the Compact purposes.

11. Nothing in this Decree is intended to affect a state's rights or obligations under the Compact, except as specifically addressed herein.

12. The Court retains jurisdiction of this suit for the purposes of any order, direction, or modification of this Decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject matter in controversy; provided, that any party requesting the Court to exercise its jurisdiction under this paragraph or answering such request shall certify that it has attempted to negotiate in good faith with the other parties in an effort to resolve the dispute sought to be brought before the Court.

Approved as to form and content:

/s/ Dean A. Couch

DEAN A. COUCH
General Counsel
Oklahoma Water Resources Board
P. O. Box 150
Oklahoma City, OK 73101-0150

Counsel of Record for Oklahoma

/s/ Paul Elliott

PAUL ELLIOTT
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
P. O. Box 12548
Austin, TX 78711-2548

Counsel of Record for Texas

/s/ Peter Thomas White

PETER THOMAS WHITE
Special Assistant Attorney General
N.M. Interstate Stream Commission
P. O. Box 25102
Santa Fe, NM 87504-5102

Counsel of Record for New Mexico

Recommended for Entry:

/s/ Jerome C. Muys

JEROME C. MUYS
Special Master